circumstances, the rate fixed is sufficient to yield reasonable compensation, *Minnesota Rate Cases*, 230 U. S. 352, 473; *Missouri Rate Cases*, 230 U. S. 474, 508.

CONSTITUTIONAL LAW — TRIAL BY JURY — INFRINGEMENT OF RIGHT BY PARTIAL NEW TRIAL. — After verdict in the Federal District Court for damages for personal injuries, the plaintiff was allowed a new trial on the sole issue of damages. The verdict on the restricted issue was rendered, and judgment was entered thereon. *Held*, that a partial new trial is unconstitutional. *McKeon* v. *Central Stamping Co.*, 264 Fed. 385 (C. C. A.).

For a discussion of this case, see NOTES, p. 72, *supra*.

CONSTITUTIONAL LAW — WHO CAN SET UP UNCONSTITUTIONALITY — WHETHER PUBLIC OFFICIAL HAS SUFFICIENT INTEREST. — The defendant, Secretary of State for North Dakota, refused to receive and file an application tendered by the plaintiff to take advantage of a state corporation statute. The plaintiff petitioned for mandamus to compel the defendant to accept and file the application. The defendant rested his case on the alleged unconstitutionality of the statute, as affecting adversely the rights of minority stockholders. *Held*, that the defendant cannot avail himself of this defense. *Mohall Farmers' Elevator Company* v. *Hall, Secretary of State*, 176 N. W. 131 (N. D.).

The court will not listen to an objection to the constitutionality of a statute, made by one whose rights are not directly affected thereby. *Hooker* v. *Burr*, 194 U. S. 415. See 21 HARV. L. REV. 438. Hence, it has been said by some courts, in a mandamus proceeding to enforce the performance of a statutory ministerial duty by an administrative officer, he cannot question the constitutionality of the statute involved. *Franklin County Comrs.* v. *State*, 24 Fla. 55, 3 So. 471; *Smyth* v. *Titcomb*, 31 Me. 272. But the defense is allowed when, it is said, the officer will violate his duty under his oath of office, or otherwise render himself personally liable, by acting under a void statute. *State* v. *Clausen*, 65 Wash. 156, 117 Pac. 1101; *State* v. *Wheatley*, 113 Miss. 555, 74 So. 427. It is fundamental, however, that an unconstitutional act is not a law, and binds no one. *Marbury* v. *Madison*, 1 Cranch (U. S.) 137. And where there is no law there is no ground for compelling the officer to act; hence unconstitutionality should be a good defense to any proceeding to enforce a statute by mandamus. *Brandenstein* v. *Hoke*, 101 Cal. 131, 35 Pac. 562; *State* v. *Candland*, 36 Utah, 406, 104 Pac. 285; *State* v. *Tappan*, 29 Wis. 664. Furthermore, it would seem that any act done by an officer in pursuance of an unconstitutional statute would be a violation of his duty under his oath to support the Constitution. See *Denman* v. *Broderick*, 111 Cal. 96, 99, 43 Pac. 516, 518; *Rhea* v. *Newman*, 153 Ky. 604, 607, 156 S. W. 154, 156. However inconvenient it may be to have petty administrative officials constantly questioning the statutes under which they are ordered to act, it seems that their right to do so must be conceded.

CONSTRUCTIVE TRUSTS — SUBROGATION — RIGHTS OF LENDER AGAINST PREVIOUSLY MORTGAGED PROPERTY. — An owner of certain personal property incumbered it with two successive chattel mortgages, both of which were duly recorded. He then represented to the plaintiff that the property was unincumbered. Plaintiff thereupon loaned him a sum of money and took an unsecured note in return. With this money the mortgagor paid off part of the first mortgage. The mortgagor having died, and all the creditors being before the court in a suit to dispose of the property, plaintiff requested that he be subrogated, to the extent of this payment, to the rights of the first mortgagee. *Held*, that the request be refused. *Southern Trust Co. et al.* v. *Garner et al.*, 223 S. W. 369 (Ark.).

Where one's property is wrongfully acquired by another, equity will impose

a constructive trust. *Edwards* v. *Culberson*, 111 N. C. 342, 16 S. E. 233; *Harrison* v. *Tierney*, 254 Ill. 271, 98 N. E. 523. If the wrongdoer uses the property to pay a creditor whose claim is secured, equity will subrogate the injured party to the creditor's former rights against the security. *Title Guaranty Co.* v. *Haven*, 196 N. Y. 487, 89 N. E. 1082; *Oury* v. *Saunders*, 77 Tex. 278, 13 S. W. 1030; *M'Mahon* v. *Fetherstonhaugh*, [1895] 1 I. R. 83. Subrogation, like the device of a constructive trust, is a remedial doctrine applied broadly as may best serve the purposes of justice. See Roscoe Pound, "The Progress of the Law — Equity," 33 HARV. L. REV. 420, 421; SHELDON, SUBROGATION, 2 ed., § 13. The principal case, however, refuses subrogation to the defrauded plaintiff and contends in effect that although there was fraud on the part of the mortgagor, this was negatived by plaintiff's failure to examine the records. In actions for deceit, nevertheless, the negligence of the injured party cannot, by the better view, be used as a defense. *Fargo Coke Co.* v. *Electric Co.*, 4 N. D. 219, 59 N. W. 1066; *Redding* v. *Wright*, 49 Minn. 322, 51 N. W. 1056. It is also well settled that creditors cannot profit by their debtor's wrong. *In re Ennis*, 187 Fed. 720; *Brennan* v. *Tillinghast*, 201 Fed. 609. Furthermore, the second mortgagee's pre-existing rights here would not be prejudiced by allowing subrogation to the plaintiff. Thus the question of whether plaintiff was put on notice by the records is immaterial. It is submitted therefore that the principal case is incorrect.

CONTRACTS — ENLISTMENT — ACTION BY SOLDIER TO RECOVER PAY. — By the terms of his enlistment in the British Army, suppliant was to be paid six shillings a day. His pay was later reduced to one shilling, on the ground that the higher rate was erroneous. After discharge, he seeks to recover the difference by petition of right. The Crown demurred. *Held*, that the demurrer be sustained. *Leaman* v. *The King*, [1920] K. B., The London Times, July 24, 1920, p. 4.

It has long been settled law in England that an army officer cannot recover his pay in an action, but must rely on the grace of the Crown. *In re Tufnell*, 3 Ch. D. 164. Suppliant sought to distinguish his case on the ground that enlistment is a contract. See ARMY ACT 1881, 44 & 45 VICT., c. 58, s. 80 (1). See also MANUAL OF MILITARY LAW, War Office, 1914, p. 189. A petition of right ordinarily lies on a contract with the Crown. *Thomas* v. *The Queen*, L. R. 10 Q. B. 31. And once the Crown has granted its fiat that right be done, the action proceeds as between subject and subject. See 2 ANSON, LAW AND CUSTOM OF THE CONSTITUTION, 3 ed., Part 2, p. 299. The principal case therefore holds either that there is no contract; or that there is a contract unenforceable against the Crown, not because of any procedural difficulty, but because of its peculiar nature as an agreement for military service. The court declined to decide which theory is correct. The section of the Army Act giving to the Crown the final decision in cases of doubt as to pay, would support either view. See 44 & 45 VICT., c. 58, s. 140 (3). In the United States enlistment is a contract. *In re Grimley*, 137 U. S. 147. And a soldier can sue on it in the Court of Claims. *Hosmer* v. *United States*, 3 Ct. Cl. 6, aff'd *United States* v. *Hosmer*, 9 Wall. (U. S.) 432.

DANGEROUS PREMISES — LIABILITY TO LICENSEES — IS A FIREMAN A LICENSEE? — Defendant maintained a paved driveway on its premises giving access from the street to its barn. An unguarded coal hole extended half way across the pavement. Plaintiff, a fireman, while going to a fire in the barn at night, fell into the coal hole and was injured. *Held*, that the plaintiff can recover. *Meiers* v. *Fred Koch Brewery*, 127 N. E. 491 (N. Y.).

By the weight of American authority, a fireman who enters property to extinguish a fire has the legal status of a licensee and takes the risk of visible